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Error to Circuit Court, Floyd County.

Posey Griffith, under indictment for felony, entered into recognizance with J. W. Bowling as surety. The recognizance was forfeited, scire facias issued against accused and Bowling, and judgment was rendered against Bowling for the amount of the bond, and he brings error. Reversed and rendered.

*John P. Lee*, for the plaintiff in error.

*Attorney-General, Inc. R. Saunders and Assistant Attorney-General J. D. Hank, Jr.*, for the Commonwealth.

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ADAMS v. HAZEN et al.

Sept. 19, 1918.

[96 S. E. 741.]

**1. Specific Performance (§ 25\*)—Requisites of Contract in General.**—A contract in writing must contain all the essential elements of a valid executory contract, such as competent parties, a legal subject-matter, a valuable consideration, and mutual assent before equity will enforce specific performance.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 496, 499, 505, 524.]

**2. Contracts (§ 32\*)—Preliminary Contract.**—If the parties are fully agreed, there is a binding contract, though a formal contract is to be prepared and signed; but if, after such agreement, the parties do not intend to be bound until a formal contract is prepared, there is no contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 330.]

**3. Contracts (§ 28 (3)\*)—Intent—Evidence.**—The circumstance that the parties to a contract intend a formal contract to be drawn up is strong evidence to show that they did not intend the previous negotiations to amount to an agreement.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 325.]

**4. Contracts (§ 15\*)—Validity—Memorandum.**—A writing in the form of a contract is not a contract, if it is a mere memorandum of incomplete negotiations, in which the minds of the parties never met, and from which either party may recede at will.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 334.]

**5. Contracts (§ 32\*)—Preliminary Contract—Formal Contract.**—A proposal or agreement in writing, expressed to be subject to a subsequent formal contract, depends upon the preparation of the formal contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 330.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**6. Contracts (§ 29\*)—Preliminary Agreement—Intention of Parties—Construction.**—Where it is not expressly stated therein that an agreement in writing shall be subject to a formal contract, it is a question of construction whether the parties intended that the terms agreed on should merely be put in form, or whether they should be subject to a new agreement the terms of which are not expressed in detail.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 328.]

**7. Specific Performance (§ 8\*)—Discretion of Court.**—Every application for the specific performance of a contract is addressed to the sound discretion of the court, regulated by legal principles.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 482.]

**8. Specific Performance (§ 121 (1)\*)—Contract—Proof.**—A contract, which may be specifically enforced, must be distinctly proven, and its terms must be clearly ascertained.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 495.]

**9. Specific Performance (§ 90\*)—Right to Relief—Diligence.**—A party seeking specific performance of a contract must be ready and diligent in enforcing his rights.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 569.]

**10. Logs and Logging (§ 3 (1)\*)—Preliminary or Formal Contract—Construction.**—A clause in a written timber agreement, making "terms of sale half cash when transfer papers are properly gotten up, and remainder to be settled by note payable six months from date," referred only to formal papers necessary to give effect to agreement, and did not contemplate a further executory contract.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1212.]

**11. Logs and Logging (§ 3 (1)\*)—Sale of Timber—Meeting of Minds.**—A written agreement for the sale of "all merchantable timber" showed a meeting of the minds of the parties in the use of that term as descriptive of the timber sold and purchased; that term having a certain and definite meaning, ascertainable by rules of construction.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1212.]

**12. Logs and Logging (§ 3 (10)\*)—Contract of Sale—"Merchantable Timber."**—In a contract for the sale of "merchantable timber," not otherwise limiting the purpose for which the timber was to be used, the description covered all timber of whatever size that at the time of or during the contract had a commercial value in that locality for purpose of manufacture or any other purpose.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Merchantable.\* For other cases, see 16 Va.-W. Va. Enc. Dig. 1212.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**13. Logs and Logging (§ 3 (11)\*)—Contract of Sale—Timber for Removal.**—Where no time for the removal of timber is specified therein, a timber contract will be construed as impliedly providing for "a reasonable time" for such removal.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1215.]

**14. Logs and Logging (§ 3 (7)\*)—Timber Contract—Construction—"Transfer Papers Are Properly Gotten Up."**—A timber contract, requiring one-half cash payment when "transfer papers are properly gotten up," meant a conveyance in writing properly acknowledged for recordation.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1212.]

Appeal from Circuit Court, Lee County.

Bill for specific performance by T. T. Adams against R. S. Hazen and others. Demurrer to bill sustained, and from a decree dismissing the bill, complainant appeals. Reversed and remanded.

*Eugene C. Massie*, for the appellant.

*B. H. Sewell*, for the appellees.

CUMBEE et al. v. RITTER.

Sept. 19, 1918.

[96 S. E. 747.]

**1. Injunction (§ 118 (1)\*)—Pleading—Sufficiency—Trespass on Land.**—In suit to enjoin trespass and cutting of timber, a bill showing prima facie title in complainant, the destruction of timber of special value and reasonably necessary for farm uses, and alleging insolvency of defendants, is not demurrable.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 609, 611.]

**2. Equity (§ 47 (1)\*)—Jurisdiction—Land Titles—Boundaries.**—Generally, in the absence of some peculiar equity arising out of the conduct, situation, or relation of the parties, courts of equity are without jurisdiction to settle disputes as to title and boundaries of land.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 610.]

**3. Adverse Possession (§ 13\*)—Hostile and Exclusive Occupancy.**—The occupancy necessary to support a claim of title by adverse possession must be both hostile and exclusive..

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 204, 205.]

**4. Injunction (§ 36 (2)\*)—Jurisdiction—Trespass—Disputed Title.**—In suit to enjoin trespass upon land and cutting of timber thereon, where both parties claim title and are exercising acts of ownership, and one fails to establish even a prima facie case, the equity court in interest of peace, law, and order should take jurisdiction.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 527.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.